

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

2:10-cv-01885-KJD-RJJ

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The court now reviews plaintiff's complaint (docket #1-2).

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner’s claims, “if the allegation of poverty is untrue,” or if the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may,

1 therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or
2 where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a
3 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson*
4 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

5 Dismissal of a complaint for failure to state a claim upon which relief may be granted is
6 provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under
7 Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under
8 Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*,
9 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
10 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
11 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
12 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
13 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard,
14 the court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex*
15 *Hospital Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to
16 plaintiff and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

17 Allegations in a *pro se* complaint are held to less stringent standards than formal
18 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
19 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
20 Cir. 1990). All or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the
21 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal
22 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
23 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
24 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever*
25 *v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

1 To sustain an action under section 1983, a plaintiff must show (1) that the conduct
 2 complained of was committed by a person acting under color of state law; and (2) that the conduct
 3 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676,
 4 689 (9th Cir. 2006).

5 **II. Instant Complaint**

6 Plaintiff, who is incarcerated at High Desert State Prison (“HDSP”), has sued corrections
 7 officer Eric Burson. Plaintiff claims that defendant violated his Fourteenth Amendment due process
 8 rights with respect to disciplinary proceedings.

9 Plaintiff alleges that he received a notice of charges on August 8, 2010, charging him with
 10 major violations. Plaintiff claims the charges were falsely advanced by officer Naylor. Burson
 11 commenced the disciplinary hearing on August 9, 2010. Plaintiff states that he informed Burson of the
 12 witnesses he wanted to present and Burson stopped the tape and told plaintiff he would further
 13 investigate the issues. Three days later the hearing recommenced and defendant informed plaintiff that
 14 he found him guilty of all charges. Plaintiff asked defendant if he had talked with plaintiff’s witnesses,
 15 including Naylor, and defendant said that he had not. Defendant imposed numerous sanctions,
 16 including disciplinary segregation and loss of statutory time.

17 “Prisoners . . . may not be deprived of life, liberty or property without due process of law
 18 [T]he fact that prisoners retain rights under the Due Process Clause in no way implies that these
 19 rights are not subject to restrictions imposed by the nature of the regime to which they have been
 20 lawfully committed” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). When a prisoner faces
 21 disciplinary charges, prison officials must provide the prisoner with (1) a written statement at least
 22 twenty-four hours before the disciplinary hearing that includes the charges, a description of the evidence
 23 against the prisoner, and an explanation for the disciplinary action taken; (2) an opportunity to present
 24 documentary evidence and call witnesses, unless calling witnesses would interfere with institutional
 25 security; and (3) legal assistance where the charges are complex or the inmate is illiterate. *See id.* at 563-
 26 70; *see also Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985); *Serrano v.*

1 *Francis*, 345 F.3d 1071, 1077-78 (9th Cir. 2003); *Neal v. Shimoda*, 131 F.3d 818, 830-31 (9th Cir. 1997);
2 *Walker v. Sumner*, 14 F.3d 1415, 1419-20 (9th Cir. 1994), *abrogated in part on other grounds by Sandin*
3 *v. Connor*, 515 U.S. 472 (1995); *McFarland v. Cassady*, 779 F.2d 1426, 1428 (9th Cir. 1986), *abrogated*
4 *in part on other grounds by Sandin*, 515 U.S. 472. Plaintiff states a claim under the Due Process Clause
5 of the Fourteenth Amendment against defendant.

6 No other claims are stated in this complaint.

7 **III. Conclusion**

8 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** the complaint (docket #1-
9 2).

10 **IT IS FURTHER ORDERED** that plaintiff's complaint **MAY PROCEED**.

11 **IT IS FURTHER ORDERED** that the Clerk **shall electronically serve a copy of this**
12 **order, along with a copy of plaintiff's complaint, on the Office of the Attorney General of the State**
13 **of Nevada, attention Pamela Sharp.**

14 **IT IS FURTHER ORDERED** that henceforth, plaintiff shall serve upon defendants, or,
15 if an appearance has been made by counsel, upon their attorney(s), a copy of every pleading, motion, or
16 other document submitted for consideration by the Court. Plaintiff shall include with the original paper
17 submitted for filing a certificate stating the date that a true and correct copy of the document was mailed
18 to the defendants or counsel for defendants. If counsel has entered a notice of appearance, the plaintiff
19 shall direct service to the individual attorney named in the notice of appearance, at the address stated
20 therein. The Court may disregard any paper received by a district judge or a magistrate judge that has
21 not been filed with the Clerk, and any paper which fails to include a certificate showing proper service.

22 DATED this 4th day of January, 2011.

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24 
25 UNITED STATES MAGISTRATE JUDGE
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